

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ADIL SHAFI,
Counter-Plaintiff/ Third-Party Plaintiff,

v.

Case No: 09-10454
Honorable Victoria A. Roberts

FREDERICK WEIDINGER AND
BRAINTECH, INC.,
Third-Party Defendant/Counter-Defendant.

**BRAINTECH, INC.'S AND FREDERICK WEIDINGER'S JOINT
EX PARTE MOTION FOR LEAVE TO FILE DISPOSITIVE
MOTION REPLY BRIEF IN EXCESS OF FIVE PAGES**

Braintech, Inc., and Frederick Weidinger, by and through counsel, hereby respectfully move this Court, pursuant to Local Rule 7.1(c)(3), for leave to file a joint dispositive motion reply brief in excess of five pages, and state as follows:

1. Pursuant to the Court's September 17, 2010 Scheduling Order, on November 19, 2010 Braintech, Inc., and Frederick Weidinger filed a joint motion for summary judgment and brief in support relative to Plaintiff Adil Shafi's Second Amended Counterclaim. The Court allowed Defendants to submit a brief of 30 pages in length.

2. On December 23, 2010, Plaintiff Shafi filed his Brief in Response. The Brief is 45 pages in length.

3. Although Braintech and Weidinger are represented by separate counsel, they have agreed to prepare and submit a joint reply brief so that all facts and argument can be set forth in one reply document for the Court's review.

4. However, the 5-page limit set by Local Rule 7.1(c)(3)(B) for reply briefs does not provide sufficient space within which Braintech and Weidinger can adequately address the relevant record and the law applicable to the issues in this case.

5. In Shafi's Second Amended Counterclaim, he alleges seven causes of action: Declaratory Judgment-Employment Contract (Count I); Breach of Contract-Employment Contract (Count II); Fraud/Fraud in the Inducement (Count III); Violation of Section 10(b) of the Exchange Act (Count IV); Violation of the Michigan Uniform Securities Act, MCL 451.810(a)(2) (Count V); Conversion (Count VI); and Unjust Enrichment (Count VII).

6. Shafi's Second Amended Counterclaim is 38 pages in length and contains over 160 separate allegations. [See Docket No. 19]

7. The documents identified and/or referenced in Shafi's Second Amended Counterclaim include a Letter of Intent, Share Purchase Agreement, Lock-Up Agreement, Employment Agreement, Non-Competition Agreement, Letter Agreement regarding Indebtedness of SI and SII, a Promissory Note, and numerous emails exchanged between Shafi and Weidinger before and after the closing documents were executed.

8. In their Joint Reply Brief, Braintech and Weidinger intend to be thorough yet succinct in their presentation to the Court and will include only those facts and arguments they believe are necessary for this Court to render a well-informed and considered decision.

WHEREFORE, Braintech and Weidinger respectfully request that this Honorable Court grant their Ex Parte Motion for Leave to File Dispositive Motion Reply Brief in Excess of Five Pages and permit them to file a Joint Brief not to exceed fourteen (14) pages.

Respectfully submitted,

NEMETH BURWELL, P.C.

By: s/Susan D. Koval
Anne Widlak (P35763)
Susan D. Koval (P59297)
Attorneys for Braintech, Inc.
200 Talon Centre Drive, Suite 200
Detroit, Michigan 48207
(313) 567-5921
awidlak@nemethburwell.com
skoval@nemethburwell.com

PILLSBURY WINTHROP SHAW PITTMAN LLP

By: s/Geoffrey J. Greeves
Geoffrey J. Greeves
Attorney for Frederick Weidinger
2300 N Street, N.W.
Washington, DC 20037-1122
(202) 663-9228
geoffrey.greeves@pillsburylaw.com

January 6, 2011

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**BRAINTECH, INC.'S AND FREDERICK WEIDINGER'S
JOINT BRIEF IN SUPPORT OF EX PARTE MOTION FOR LEAVE
TO FILE DISPOSITIVE MOTION REPLY BRIEF IN EXCESS OF FIVE PAGES**

TABLE OF CONTENTS

STATEMENT OF THE ISSUES PRESENTED	ii
INDEX OF CONTROLLING AUTHORITIES	iii
ARGUMENT	1

STATEMENT OF THE ISSUES PRESENTED

- I. WHETHER BRAINTECH AND FREDERICK WEIDINGER SHOULD BE PERMITTED TO FILE A JOINT DISPOSITIVE MOTION REPLY BRIEF IN EXCESS OF FIVE PAGES.

INDEX OF CONTROLLING AUTHORITIES

<u>Rules</u>	<u>Page</u>
LR 7.1(c)(3)	1

ARGUMENT

In their Joint Motion for Summary Judgment, Braintech and Weidinger demonstrated that they are entitled to summary judgment in their favor on Adil Shafi's Second Amended Counterclaim. The facts of this case are not necessarily complex, but they are lengthy. The allegations are extensive as reflected in the length of the Second Amended Counterclaim.

The legal issues which will be addressed in the joint reply brief relate to seven causes of action against multiple parties arising from a business transaction between Shafi and Braintech: Declaratory Judgment-Employment Contract (Count I Braintech only); Breach of Contract-Employment Contract (Count II Braintech only); Fraud/Fraud in the Inducement (Count III Braintech and Weidinger); Violation of Section 10(b) of the Exchange Act (Count IV Braintech and Weidinger); Violation of the Michigan Uniform Securities Act, MCL 451.810(a)(2) (Count V Braintech and Weidinger); Conversion (Count VI Braintech and Weidinger); and Unjust Enrichment (Count VII Braintech and Weidinger).

Given the magnitude of the claims at issue and the complexity of the legal issues raised, the page limitation provided by the Local Rules does not provide enough space for full analysis and presentation of the facts and legal issues pertinent to resolution of the joint dispositive motion.

Braintech and Weidinger believe that there is ample justification to extend the page limitation given the number of allegations and claims alleged in the Second Amended Counterclaim, the desire to submit a single Reply Brief to the Court to avoid duplication, and the importance of providing both Braintech and Weidinger with ample space so that their respective positions can be presented in a single document.

CONCLUSION

WHEREFORE, Braintech and Weidinger respectfully request that this Honorable Court grant their Ex Parte Motion for Leave to File Dispositive Motion Reply Brief in Excess of Five Pages and permit them to file a Joint Reply Brief not to exceed fourteen (14) pages.

Respectfully submitted,

NEMETH BURWELL, P.C.

By: s/ Susan D. Koval
Anne Widlak (P35763)
Susan D. Koval (P59297)
Attorneys for Braintech, Inc.
200 Talon Centre Drive, Suite 200
Detroit, Michigan 48207
(313) 567-5921
awidlak@nemethburwell.com
skoval@nemethburwell.com

PILLSBURY WINTHROP SHAW PITTMAN LLP

By: s/ Geoffrey J. Greeves
Geoffrey J. Greeves
Attorney for Frederick Weidinger
2300 N Street, N.W.
Washington, DC 20037-1122
(202) 663-9228
geoffrey.greeves@pillsburylaw.com

January 6, 2011

CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2011, I electronically filed the foregoing paper (Braintech Inc's and Weidinger's Joint Ex Parte Motion for Leave to File a Dispositive Motion Reply Brief in Excess of Five Pages and Brief in Support) with the Clerk of the Court using the ECF system, which will send notification of such filing and service of such documents to all parties via their counsel of record at the e-mail addresses disclosed on the Notice of Electronic Filing receipt.

s/Susan D. Koval
Susan D. Koval (P59297)
NEMETH BURWELL, PC
Attorney for Braintech, Inc.
200 Talon Centre Drive, Suite 200
Detroit, Michigan 48207
(313) 567-5921
skoval@nemethburwell.com
P59297